IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2412 OF 2004

Narayan Krishna Palavkar and Ors. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

And

Reserve Bank of India ... Intervenor

Mr. U.G. Kerkar for Petitioner.

Mr. Pradeep Jadhav, A.G.P. for R. Nos. 1 to 5 and 8.

Mr.Virendra Tulzapurkar with Mr. B. Saraf with Mr. Yogesh Chavak i/by Udwadia & Udeshi for Intervenor.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : APRIL 15, 2005

P.C.

. Twelve Petitioners have approached this court to contend that their structures are existing on land belonging to Respondent No.1. It is their case that their structures existed on the land previous to 1.1.1995 and that being the case, they are entitled to get alternative accommodation, if they are to be evicted. By the present petition, they have sought a writ in the nature of mandamus to direct respondents to issue separate photo pass to each of the Petitioners in accordance with law, further to direct respondents to give alternative

premises to each of the Petitioners. Prayer is also sought that the respondents be restrained or a writ be issued to direct them not to deduct house rent from their salaries. This is because Petitioner Nos. 1, 5, 6, 11 and 12 are presently in the service of Respondent No. 1 and house rent allowance is presently being deducted from their salaries. The Petitioners have relied on Exhibit D dated 12.5.2003 in which Deputy Collector, (Encroachment/Expulsion) Colaba Division, has set out that 11 residential hutment dwellers some of whom are government employees from whom house rent will be deducted are eligible for protection as per Government policy and that expulsion action cannot be initiated.

. On behalf of the Respondent State, an affidavit has been filed by one Mr. Hemantkumar Sawant, Dy. Engineer, Central Sub Division. It is pointed out therein that the Petitioner Nos. 4 to 7 are working in Asiatic Society which is controlled and governed by the Union of India. Petitioner Nos. 1, 5, 6, 11 and 12 are in the service of State Government. Petitioner Nos. 3 and 9 have retired from the service of State Government and Petitioner No. 8 has since expired. It is also pointed out that the Petitioner Nos. 2, 4, 7 and 10 are not

state Government servants. Petitioner No. 7 is residing along with Petitioner No. 2. It is the case of the affiant that these petitioners have constructed unauthorised hutments on the Collector's land and are using the same as family residence. It is also pointed out that the Executive Engineer, Public Service Department received a letter from the Reserve Bank of India dated 9.4.2003 requesting removal of two unauthorised stalls along with structures of the Petitioners in front of the Central Office Building of R.B.I. as it hampers the security arrangement around Central building of R.B.I. It is pointed out that apart from those who are in Government service, others are not entitled for government accommodation. For those who are in Government service, Government quarters have been reserved at Bandra Government colony. It is pointed out that the area is not notified as slum and further there are less than 25 hutments and as such the provisions of the Slums Act are not applicable. The Petitioner No. 1 has filed additional affidavit dated 12.8.2004 and in Para 3 it is set out that they had made representation to the competent authority for issuance of photo pass and the same is pending with the said authority.

. Pursuant to the order of this court dated 14.10.2004, the Reserve Bank of India was allowed to intervene. On behalf of the R.B.I. an affidavit has been filed by Mr. M.P. Kothari. It is pointed out that considering the threat perceptive to the building of R.B.I. after consulting the Intelligence Bureau, it was suggested that the structures adjacent to the land namely shoe stall, Pan stall and Auto garage pose a potential security threat to the building of the Intervener. Various other averments are made in the affidavit. It is therefore, pointed out that any attack on the Central Office of the R.B.I. will have an effect on economy and financial system of the country. The existence of unauthorised structures abutting the Central Office poses security threat to the building of the Intervenor and conveniently it is pointed out that the said structures should be removed.

. The Government of Maharshtra has from time to time has been issuing various resolutions in the matter of issuing photo pass as also for protection of those structures which are situated on slum lands. G.R. of 11.7.2001 provides as to who is eligible for photo pass. Perusal of the resolution would indicate that the scheme would be applicable

to slums and the lands amongst others of the ownership of the State Government and which have been declared as slums under the provisions of the Maharashtra Slums (Improvement, Clearance and Redevelopment) Act, 1971. The G.R. also disclose that the scheme shall not be applied to hutments less than 25 in number. The Petitioner have sought relief that they may be issued photo pass. For that purpose it was for the Petitioner to establish that the area where their structure stand has been notified as Slum Area and secondly that there are more than 25 hutments. From the documents which has been adverted to earlier and which has been relied upon by the Petitioners to contend that they are entitled for the photo pass, would show that there are 11 residential and 4 non-residential structures on the land. In other words less than 25. The second aspect of the matter is that the Petitioners nowhere in the petition averred that the area where the structures are existing has been notified as slum area under Section 4 of the provisions of the Maharashtra Slum Act.

. Once that be the case, and as the Petitioners have not established any legal right in themselves,no relief in terms of the prayer Clause (a) can be granted by this court. It is for the

competent authority if petitioner's claims are pending to consider the same and dispose of the same according to law. From the averments and the material on record the two basic requirements for alternative accommodation have not been established by the Petitioners, Prayer Clause (b) also cannot be granted. In so far as relief that H.R.A. should not be deducted from the salaries, considering the controversy involved and considering the submissions made on behalf of the respondent State herein, that five petitioners who have been adverted to earlier who are in Government service will be given alternative Government accommodation and that in fact the premises have been reserved for them at Bandra (E), Government Housing Colony, it is not necessary for this court to go into that aspect of the matter. Considering what is held, in our opinion, the Petitioners have failed to make out any case warranting admission of this petition. In the light of that petition dismissed.

. On behalf of the Intervener R.B.I. their learned counsel makes a statement that considering the threat perceptive State Government ought to take immediate steps for removal of the Petitioners from the land. The State Government considering

the affidavit filed by R.B.I. before this court to take immediate steps for removal of the structures.

. The learned counsel for the petitioner seeks continuance of the interim order. We do not think this to be a fit case to continue the interim order. We however, direct the State Government not to take steps to evict those who are not entitled for alternative accommodation at least for a period of three months from today and then by following due procedure of law.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)